No. 20,781

United States Court of Appeals
For the Ninth Circuit

RETAIL CLERKS UNION, LOCAL NO. 1179, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition to Review, Modify and Set Aside an Order of the National Labor Relations Board

BRIEF FOR PETITIONER

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JURISDICTION

This is a proceeding to review, modify, and set aside an order of the National Labor Relations Board dismissing a complaint filed pursuant to the provisions of the Labor-Management Relations Act (29 U.S.C. § 151, et seq.). This Court's jurisdiction rests upon 29 U.S.C. § 160(f), and is admitted by Respondent's Answer.

STATEMENT OF THE CASE

On or about September 16, 1964, the Petitioner herein, Retail Clerks Union, Local No. 1179, com-

menced picketing the employer, John P. Serpa, Inc.'s, auto sales location in Martinez, California (R. Vol. 1-A, p. 121) for the purpose of informing the public that the employer did not have a collective bargaining agreement with Petitioner and to organize the employer's auto salesmen (R. Vol. 1-B, p. 143). Shortly after the picketing commenced, the employer's general manager and half owner, Mr. Fred Peri, was informed by a business representative of the Petitioner that attempts were being made by Petitioner to organize the sales personnel (R. Vol. 1-B, p. 143). In consequence of that announcement, Peri had several meetings and conferences with representatives of the Contra Costa Automotive Association, Inc. (herein the "Association"), an employer collective bargaining representative dealing with several other unions representing employees in an association-wide bargaining unit.[1] These meetings concerned the meaning and purposes of the picketing and the possible development of union organization of the employer's auto salesmen (R. Vol. 1-B, pp. 169, 170).

Petitioner union succeeded in securing authorization cards from five of the employer's seven auto salesmen. These cards gave Petitioner the right to represent the salesmen in collective bargaining with the employer (R. Vol. 1-A, pp. 53-57). Upon receipt of this written evidence of the desires of the majority of the auto salesmen for collective bargaining representation by

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[1]John P. Serpa, Inc. is a member of the Association, although its sales personnel are not among those employees covered by agreements between those various unions and the Association. (R. Vol. 1-A, p. 10.)

the Petitioner, three officials of the Petitioner, on September 25, 1964, visited Peri, the general manager, in his office for the express purpose of demanding recognition of the Petitioner as the collective bargaining representative of the auto salesmen. At this meeting with the general manager, who, incidentally, is in charge of labor relations for the employer (R. Vol. 1-A, pp. 13, 51), the Petitioner, through its secretary-treasurer, Mr. William Roddick, presented Peri with a letter demanding recognition together with a recognition agreement for Peri's signature on behalf of the employer.

Mr. Peri read the documents and asked Roddick their meaning (R. Vol. 1-A, pp. 16, 17, 22). Roddick explained that the Petitioner represented the employer's auto salesmen and requested that the employer therefore recognize Petitioner for collective bargaining purposes (R. Vol. 1-A, p. 22). Roddick asked Peri how many salesmen were employed by the employer at its Martinez and Concord, California, locations and Peri replied that there were seven such employees. Roddick then presented Peri with the authorization cards signed by five of these salesmen. These cards were carefully examined by Peri, and Peri admitted that from his examination of the cards he knew that they contained signatures of his five salesmen other than salesmen Freitas and Davis (R. Vol. 1-A, p. 18, Vol. 1-B, p. 158). Roddick at first suggested that a card cross-check be utilized by the parties as a means of ascertaining whether Petitioner in fact represented the employer's salesmen (R. Vol. 1-A, pp. 27, 28), but

later stated that this procedure was not necessary in view of the fact that Peri himself had examined the cards and had not expressed any doubts as to the validity of the cards as evidence of the Petitioner's majority status (R. Vol. 1-A, p. 29).

As Peri himself testified during the hearing before the National Labor Relations Board's Trial Examiner: "The cards were right there for me to look at them, if I wanted to." (R. Vol. 1-A, p. 29, lines 3-4), and, of course, Peri admitted that he had in fact examined the cards and therefore knew that only Freitas and Davis had not signed cards (R. Vol. 1-B, p. 158). The evidence adduced at the hearing is clear that Peri expressed no doubt whatsoever that the Petitioner represented a majority of the employer's auto salesmen. Peri stated: "What comment could I make?" (R. Vol. 1-A, p. 23, line 10. See also Vol. 1-A, p. 36). After examining the cards and reading the letter demanding recognition and the recognition agreement, Peri informed the Petitioner's representatives that he would like to consult with his attorney and would thereafter telephone Roddick and let him know what the employer intended to do (R. Vol. 1-A, pp. 60, 80, 81, 86).[2] Roddick left his business card with Peri, after writing on it his home telephone, so that Peri could contact him over the week-end (R. Vol. 1-A, p. 24).

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[2]The Trial Examiner of the National Labor Relations Board credited the Petitioner's testimony that Peri promised to call the Union officials as soon as he had contacted his attorney. (R. Vol. 1, p. 16.)

Although Peri contacted his attorney the following day (R. Vol. 1-A, p. 24), he did not telephone or otherwise contact any of the Union representatives. On the contrary, in the words of the National Labor Relations Board's Trial Examiner, who later heard the case:

> . . . but from all the record divulges the Respondent did nothing at all. Peri apparently clung to the hope that the Union would just go away. (R. Vol. 1, p. 16.)

Moreover, Peri made no effort after the meeting with the Petitioner's representatives to question his salesmen or otherwise raise any question as to the validity of the cards or as to whether the cards in fact accurately represented his employees' desires as to representation by Petitioner (R. Vol. 1-A, p. 29).

Peri's state of mind is further evidenced by the fact that when one of Petitioner's business representatives contacted Peri again on October 1, 1964 at the employer's premises (R. Vol. 1-A, p. 73), Peri informed the Union official that he would *never* sign a recognition agreement with Petitioner (R. Vol. 1-A, p. 74). Not having heard from Peri, Petitioner on September 29 filed with the National Labor Relations Board a written Charge against the employer alleging that the employer violated the National Labor Relations Act, as amended, by its refusal to recognize and bargain with the Petitioner (R. Vol. 1, p. 34).

The Board, on December 21, 1964, after a complete and thorough investigation by its Regional Office of the facts of the Charge, issued a Complaint based upon

the Charge (R. Vol. 1, p. 5), and a hearing was held before a Trial Examiner of the Board. Testimony adduced at the Board proceedings reflected, without direct refutation, a substantial amount of coercive conduct by the employer's agents and representatives directed against members of the Petitioner engaged in the picketing of the employer's premises (R. Vol. 1-A, pp. 110-128). The testimony relating to this conduct will be brought out in more detail in the argument herein.

The Board's Trial Examiner, who observed the demeanor of all of the principals on the witness stand and who passed upon the issue of credibility in each case, found that *the employer did not have a good faith doubt of the Petitioner's majority status at the time of Petitioner's demand for recognition on September 25, 1964* (R. Vol. 1, p. 16). The Trial Examiner went on to find, however, that because two of the five salesmen later signified to the employer their repudiation of the Petitioner, the employer should not be required to recognize and bargain with the Petitioner on the basis of such "a fleeting and evanescent majority" (R. Vol. 1, p. 16).[3] The Trial Examiner consequently recommended dismissal of the Complaint.

Upon a review of exceptions to the decision of the Trial Examiner, filed by the General Counsel of the Board and by the Petitioner, as charging party, the

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[3]The Union was never advised of this purported "repudiation" until late October (R. Vol. 1-A, p. 101). Such "repudiation" has no relevance to the Employer's earlier refusal to bargain. See *Country Lane Food Store*, 142 NLRB 683, 696; *Snow v. NLRB*, 308 F. 2d 687 (9th Cir. 1962).

Board affirmed the Trial Examiner's ultimate conclusion that the Complaint should be dismissed (R. Vol. 1, p. 24). The Board thereupon dismissed the Complaint. However, in so doing, the Board adopted an entirely different ground for its decision from the rationale utilized by the Trial Examiner, i.e., the Petitioner's "fleeting and evanescent majority". Instead, the Board determined that the General Counsel had produced no evidence indicating that the employer did not act in good faith when it refused to recognize and bargain with Petitioner or indicating that the employer had rejected the collective bargaining principle manifested in the Act. In so doing, the Board attempted to distinguish its decision in *Snow & Sons,* 134 NLRB 709, *enf'd* 308 F. 2d 687 (9th Cir. 1962) on grounds hereinafter discussed.

This petition to review, modify and set aside the Board's order dismissing the Complaint followed.

QUESTION INVOLVED

Is there substantial evidence in this Record to support the Board's finding—which is contrary to the finding of the Trial Examiner who heard the case—that the employer had a good faith doubt as to Petitioner's majority status?

ARGUMENT

The primary issue in this case, for review by this Court, is whether or not the employer, John P. Serpa, Inc., entertained at the time of the request for recognition, a *bona fide* doubt concerning the Petitioner's status as representative of the majority of the employer's auto salesmen. If the employer in fact had no good faith doubt of the Petitioner's majority status, it is guilty of a refusal to bargain with Petitioner within the meaning of Section 8(a)(5) of the Act, *Snow & Sons,* 134 NLRB 709, *enf'd* 308 F. 2d 687 (9th Cir. 1962); *Kellogg's Inc., d/b/a Kellogg Mills,* 147 NLRB No. 41, *enf'd* 347 F. 2d 219 (9th Cir. 1965), and the order of the Board dismissing the Complaint herein is erroneous and should be set aside.

The issue thus turns upon a question of fact: Was the employer motivated by a good faith doubt as to the Petitioner's majority status when it refused to recognize and bargain with the Petitioner at the time of the presentment to it on September 25, 1964 of the authorization cards signed by five of the seven auto salesmen? With respect to the review of this question of fact, this Court in *Snow & Sons,* supra, properly stated its function upon review to be:

> The findings of the Board with respect to this question of fact, if supported by substantial evidence on the record considered as a whole, are conclusive. Section 10(e) of the Act, 29 U.S.C.A. § 160(e). But unlike the rule which obtains on the review of the sufficiency of the evidence to support a jury verdict, the substantiality of the evidence in support of the Board's findings "must take into account whatever in the record fairly

detracts from its weight". *Universal Camera Corporation v. NLRB,* 340 U. S. 474, 488, 71 S. Ct. 456, 95 L. Ed. 456.

. . .

. . . the Supreme Court has admonished that evidence supporting a conclusion reached by the Board ". . . may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion" *Universal Camera Corporation* at pages 492, 496, 71 S. Ct. at pages 467, 468.

Snow & Sons, 308 F. 2d at page 691.

The Trial Examiner's conclusion is clear in his decision on this question of fact. He determined that the employer had *no* good faith doubt of the Petitioner's majority status on September 25, 1964, the date of the Petitioner's presentment to the employer of the authorization cards signed by a majority of the auto salesmen and the date of Petitioner's demand for recognition as their collective bargaining representative (R. Vol. 1, pp. 15 and 16). The Board, on the other hand, upon review, rested its order dismissing the Complaint upon the ground that *no evidence* was introduced to show the absence of good faith doubt on the part of the employer when it refused, on September 25, 1964, to recognize and bargain with the Petitioner as the representative of its auto salesmen.

As to the Trial Examiner's conclusion concerning the Union's "fleeting and evanescent" majority, it

cannot be gainsaid that if the Board had given its attention to this matter instead of concerning itself with the Trial Examiner's findings of fact, the Board would have rejected this conclusion as contrary to the decisions of the Board and the Courts. The fact as to whether an employer entertained a genuine doubt that a union represents a majority of the employees is to be determined by precise reference to the time of the refusal to recognize and bargain with the Union. *United Mine Workers v. Arkansas Oak Flooring Co.,* 351 U. S. 62, 74 (1956); *Snow & Sons,* supra; *Franks Bros. v. NLRB,* 321 U. S. 702 (1944); *Scobell Chemical Co. v. NLRB,* 267 F. 2d 922 (2nd Cir. 1959); *Henry Spen & Co.,* 150 NLRB No. 21.

In the present case, it is manifest that the employer refused to bargain on the date of September 25, 1964 when it refused to recognize Petitioner as bargaining representative even though it had no doubt whatsoever as to the fact that Petitioner represented a majority of the employees in the appropriate unit. Even if it had been found by the Board's Trial Examiner that the employer's refusal to bargain did not occur until October 1, 1964, when the employer's agent orally and unequivocally stated that he would *never* sign an agreement recognizing the Petitioner as the representative of the auto salesmen, it is nevertheless apparent that the alleged repudiations were not a factor in the employer's decision not to recognize the Petitioner's majority status. Thus, the employer readily admitted that the purported written statements from two of its salesmen repudiating the Petitioner as their

representative had no bearing whatever on its decision not to recognize the Petitioner (R. Vol. 1-B, pp. 159-160). Such statements therefore, are completely immaterial to the refusal to bargain issue.

The true focal point of this case is whether or not there is sufficient evidence to support the Trial Examiner's finding of fact that the employer actually entertained no genuine doubt of the Petitioner's majority status at the time of the employer's refusal to recognize and bargain with the Union.

The Petitioner presented its demand for recognition in clear, simple, and unequivocal terms, orally and by letter and, at the employer's request, further explained its majority designation and that the unit sought was limited to the seven auto salesmen. Cards signed by five of the seven salesmen were submitted to the employer, who personally examined them. The employer then and there conceded that these cards showed representation by the Union of a majority of the employees in the unit. The employer neither challenged the authenticity of the signatures nor the validity of the cards, expressed no doubt as to appropriateness of the unit sought or its own authority to recognize and bargain with Petitioner, and stated no desire for a Board election or a check of the cards by a third party.[4] A refusal to recognize a union under these circumstances has been repeatedly held to constitute a violation of Section 8(a)(5) of the

[4]As a matter of fact, Petitioner suggested to the employer that a third-party check the cards, but, upon determining that the employer had no objections to the cards as presented, subsequently suggested that a third-party check would be unnecessary. (R. Vol. 1-A, pp. 27, 28.)

Act. *Dixon Ford Shoe Co.,* 150 NLRB No. 86; *Cullen-Thompson Motor Co.,* 94 NLRB 1252, *enf'd* 201 F. 2d 369 (10th Cir., 1953); *Robert P. Scott, Inc.,* 134 NLRB 1120; *Webb Fuel Company,* 135 NLRB 309, *enf'd* 308 F. 2d 936 (6th Cir., 1962); *Greyhound Terminal,* 137 NLRB 87, *enf'd* 314 F. 2d 43 (5th Cir., 1963); *Air Filter Sales & Service of Denver, Inc.,* 142 NLRB 384; *Snow & Sons,* supra; *Kellogg's Inc.,* supra; *George Groh & Sons,* 141 NLRB 931, *enf'd* 329 F. 2d 265 (10th Cir., 1964); *Henry Spen & Company, Inc.,* 150 NLRB 21; *Jem Mfg. Co., Inc.,* 156 NLRB 62; *Harry's TV Sales,* 143 NLRB 51.

In spite of these Board and Court decisions holding that employer activity precisely identical to that of the employer herein is an unfair labor practice under Section 8(a)(5) of the Act, the Board in this case nevertheless determined that the General Counsel "has not introduced any evidence which would support a finding" that the employer sought, by its action, "to gain time within which to undermine the Union and dissipate its majority status or had completely rejected the collective bargaining principle" (R. Vol. 1, p. 24). The fact is that the record is replete with evidence supporting a finding that the employer had no genuine doubt of the Petitioner's majority status at the time of its refusal, commencing on September 25, 1964 and continuing thereafter, to recognize and bargain with the Petitioner.

Some evidence of the Board's obvious misreading of the record in this case, its own prior decisions and the decisions of this Court, is contained in a footnote

to its decision in *Jem Mfg. Co., Inc.,* supra. Pointing out there what it claimed to have found in its examination of the record in the instant case, the Board noted that the "union merely spread the authorization cards in front of the employer. The General Counsel presented *no evidence that the employer examined the cards* or made any statement that it believed the union represented a majority of its employees . . ." Footnote 6, *Jem Mfg. Co., Inc.,* supra (emphasis supplied). It is obvious from this quotation that the Board misread the record herein. There is evidence in the record of this case that the employer not only looked at the cards, but examined them *carefully* (R. Vol. 1-A, p. 18, Vol. 1-B, p. 158). As far as any affirmative statement by the employer that it believed that the Petitioner represented a majority of its employees is concerned, we respectfully submit that it is inconceivable that the absence of such an affirmative statement by an employer, under the factual circumstances of this case, operates to defeat the rights of employees to organize and bargain collectively through representatives of their own choosing within the meaning of the Act. The evidence herein clearly points to a finding that the employer regarded the Petitioner as indeed representing a majority of its auto salesmen; so much so, it is respectfully submitted, that the Petitioner had every reason to believe that a card check by a third party would be wholly unnecessary, since, as the employer witness stated at the hearing on this matter, upon examining the cards the employer's position was "What comment could I make?" (R. Vol. 1-A, p. 23).

Based upon his observation of the witnesses and their credibility, the Trial Examiner, in effect, found upon the evidence and upon his credibility determination that the employer had no good faith doubt that the Petitioner represented a majority of its auto salesmen, within the meaning of *Snow & Sons,* supra. The determination of credibility is, of course, one of the primary functions of the Board's Trial Examiner, and his findings are entitled to acceptance by the Courts. See *Skyline Homes,* 134 NLRB 155, *enf'd as modified,* 323 F. 2d 642 (5th Cir., 1963); *Howe Scale Co.,* 134 NLRB 275, *enf'd,* 311 F. 2d 502 (7th Cir., 1963). And it has been held that the existence or non-existence of a good faith doubt, in light of all the circumstances, raises mainly a question of credibility. *NLRB v. Crean* (7th Cir., 1964), 326 F. 2d 391.

Leaving aside the question of the reference to an "evanescent" majority, the Trial Examiner in effect concluded that the present case was controlled by the precedent of *Snow & Sons,* supra:

> In *Snow & Sons,* 134 NLRB 709, 710-711, the Board said, "the right of an employer to insist upon a Board-directed election is not absolute. Where, as here, the Employer entertains no reasonable doubt either with respect to the appropriateness of the proposed unit or the Union's representative status, and seeks a Board-directed election without a valid ground therefor, he has failed to fulfill the bargaining requirements under the Act." Were it not for the communications received by Peri from Brave and Hoskins on or before September 30, I think that the case just referred to would dictate the decision here (R. Vol. 1, p. 16).

The Board sought to distinguish this Court's decision in *Snow & Sons,* supra, upon the ground that in that case the employer agreed to the check of cards against the payroll by a neutral third party and thereafter rejected the results of such a check and sought a Board election. In the instant case, the employer himself examined the authorization cards and was satisfied as to their identity and validity. A third party check was, therefore, completely unnecessary. If a determination to accept a third party cross check and later repudiation thereof will evidence a lack of good faith, *a fortiori,* actual direct participation in and consequent actual knowledge of majority status followed by a refusal to recognize must also constitute ample affirmative evidence of a lack of good faith doubt as to majority status.

It is respectfully submitted that an employer should not be allowed to escape its responsibilities under the Act, thus defeating its employees' rights thereunder, simply by directly participating in a card check and later repudiating the results. The cases are clear that the only necessary fact to be established is that the employer had no genuine doubt of the Petitioner's majority status and such fact, we submit, should not depend upon such a mechanistic notion as that submitted by the Board herein as to what is necessary proof of such fact.

The Board has itself recognized that the situation wherein an employer requests and then rejects a third party card check is not the only card check situation which will evidence an employer's lack of good faith doubt as to majority status. Thus, the Board has held

an employer not to have had the requisite good faith doubt which would vitiate a charge of refusal to bargain where the employer has not contested or challenged the validity of cards submitted directly to the employer by the Union. In *Jem Mfg. Co., Inc.,* supra, a case arising subsequent to the instant case, the Board declared:

> Ordinarily, the General Counsel sustains this burden of proof by demonstrating that an employer has engaged in other unfair labor practices which are designed to dissipate a union's majority status. *However, an employer's bad faith may also be demonstrated by a course of conduct which does not constitute an independent unfair labor practice.* Thus, in *Snow & Sons* the employer's objective of seeking delay and its rejection of the collective bargaining concept was manifested when it repudiated a previously agreed upon card check indicating the union's majority status by continuing to insist on an election. Similarly, in *Kellogg Mills,* the Board found that the employer had manifested bad faith when, after a card check by a third party which established the union's majority and the actual commencement of bargaining negotiations, the employer withdrew from negotiations and demanded an election upon the advice of newly hired counsel. The only relevant difference between *Kellogg Mills* and this case is that in the former a third person made the card check which satisfied the employer that the union represented a majority, whereas in this case the employer himself examined the cards to determine the Union's majority. *This difference in the means of checking a union's majority is of no significance: an em-*

ployer's check certainly is as reliable as that by a third party. (Footnotes deleted; emphasis supplied.)

In the instant case, the evidence clearly supports a conclusion that the employer believed that the Petitioner represented a majority of its salesmen. The employer's desire to consult with its attorney, and its failure to communicate with the Union after such consultation, with respect to the Petitioner's request for recognition, amply manifests a complete rejection of the principle of collective bargaining. See *NLRB v. Dahlstrom Metallic Door Co.,* 112 F. 2d 756 (2nd Cir., 1940); *George Groh & Sons,* 141 NLRB 931, *enf'd* 329 F. 2d 265 (10th Cir., 1964). The Trial Examiner herein concluded that such tactics were engaged in by the employer with the hope that the Union "would just go away" (R. Vol. 1, p. 16). Perhaps no clearer case of employer rejection of the collective bargaining principle can be found. The Board has held, with judicial approval, that a failure to answer, or undue delay in answering, a request for bargaining is not consistent with a good faith doubt. *NLRB v. Howe Scales,* 134 NLRB 275, *enf'd* 311 F. 2d 502 (7th Cir., 1963); *Economy Food Center, Inc.,* 142 NLRB 901, *enf'd* 333 F. 2d 468 (7th Cir., 1964).

Evidence of the employer's antipathy to the Petitioner and its demand for recognition, which tends to support a finding of lack of good faith doubt of the Petitioner's majority status, is also found in a series of events occurring after the demand for recognition and attendant refusal by the employer.

Union pickets Bostick and Walker testified without contradiction of a number of threats by various employer representatives. A number of these threats occurred in the presence of some of the unit auto salesmen employees (R. Vol. 1-A, pp. 118-120). Union picket Pimental was threatened by management with bodily harm a dozen or more times during October and November 1964 (R. Vol. 1-A, pp. 123, 124, 125, 126, 127). Clearly, evidence of this nature supports a finding of lack of good faith doubt by the employer of the Petitioner's majority status and provides guidance in a determination of the employer's motivation for its refusal to recognize and bargain with the Union. See *Bernel Foam Products Co.,* 146 NLRB 161 (where the pertinent employer activity occurred about two weeks after the refusal to bargain), and *Johnnie's Poultry Co.,* 146 NLRB 98.

The Trial Examiner failed to make any finding of independent employer violations under 8(a)(1) of the Act for the reason that there was no allegation in the General Counsel's complaint respecting these incidents. However, the employer had full opportunity to litigate the question of threats to pickets, and did so, and, it is submitted, the Trial Examiner should have found that the employer committed independent unfair labor practices within the meaning of Section 8(a)(1) of the Act because it made its threats in the presence of the employees in the unit for which the petitioner sought representative recognition. See *Independent Metal Workers Union, Local 1, (Hughes Tool Co.),* 147 NLRB 166; *NLRB v. Puerto Rico Rayon Mills,* 293 F. 2d 941 (1st Cir. 1961). And, of

course, it is respectfully submitted that said activity significantly supports a finding of union animus bearing on the employer's refusal to bargain with the Petitioner. See *Cosmodyne,* 150 NLRB 1.

The criterion in this case is whether there is sufficient evidence on the record considered as a whole, taking into account whatever detracts from its weight, to support the Board's dismissal of the Complaint herein upon the ground that no evidence was introduced to show absence of good faith doubt by the employer with respect to Petitioner's status as the representative of the majority of the employer's auto salesmen. It is respectfully submitted that the Board has apparently misread the record since there is contained therein ample evidence of the absence of a *bona fide* doubt by the employer of the Petitioner's majority status at the time the employer refused and declined to recognize and bargain with the petitioner.

This case falls directly within the rule of the Board and this Court in *Snow & Sons,* supra, and the Board's attempt to distinguish that case from the instant matter, as evidenced by the rationale contained in its footnote to the decision in *Jem Mfg. Co., Inc.,* 156 NLRB 62, must be regarded as illogical and unreasonable, and in direct contravention of the Congressional policy manifested in the Act to provide employees with an untrammelled right to organize and bargain collectively with their employers. It is respectfully submitted that the plain language of the Act, the decisions of the Board and the Courts under the Act clearly provide that an employer *must* bar-

gain collectively with the representative of his employees' choosing, upon a request to do so, unless that employer entertains a genuine doubt of the majority status of his employees' representative. In the instant case, the Board's Trial Examiner determined that the employer had no good faith doubt of the Petitioner's majority status and the evidence contained in the record overwhelmingly supports such a finding. Therefore, it is respectfully submitted that the Board erroneously dismissed the Complaint when it expressly determined that there was no evidence to support the Trial Examiner's finding of lack of good faith doubt on the part of the employer.

CONCLUSION

For the foregoing reasons the order of the Board should be set aside and the Board should be ordered by the Court to find that the employer violated Section 8(a)(5) of the Act when it refused to bargain with Petitioner upon request and to thereupon issue an order requiring the employer to recognize and bargain with the Petitioner. *Franks Bros. Co. v. NLRB,* 321 U. S. 702.

Dated, San Francisco, California,
June 14, 1964.

Respectfully submitted,
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Certificate of Counsel

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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Attorney for Petitioner.